



Senate

General Assembly

File No. 380

February Session, 2000

Substitute Senate Bill No. 2

Senate, April 3, 2000

The Committee on Human Services reported through SEN. HANDLEY of the 4th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

An Act Concerning Assisted Living Services In Congregate Housing.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (a) Not later than July 1, 2000, the Commissioner
2 of Social Services shall seek a waiver from federal law to permit federal
3 participation for Medicaid expenditures for assisted living services
4 provided to residents of congregate housing, as defined in section 8-
5 119e of the general statutes. On and after the date the waiver is
6 approved by the federal Health Care Financing Administration, the
7 commissioner shall arrange for medical assistance for such assisted
8 living services in accordance with this section. Such services shall be
9 provided by an assisted living services agency. As used in this section,
10 "assisted living services" means nursing services and assistance with
11 activities of daily living provided to clients living within a managed
12 residential community having supportive services that encourage
13 clients primarily age fifty-five or older to maintain a maximum level of
14 independence.

15 (b) The Department of Social Services and the Department of
16 Economic and Community Development shall enter into a
17 memorandum of understanding, to be effective not later than the date
18 a waiver is approved pursuant to this section, for the purpose of
19 providing assisted living services in congregate housing for Medicaid
20 eligible individuals pursuant to section 2 of this act.

21 (c) On and after the date the waiver is approved, the Department of
22 Social Services shall transfer to the Department of Economic and
23 Community Development the amount required by the Department of
24 Economic and Community Development to provide assisted living
25 services to Medicaid eligible individuals in congregate housing not to
26 exceed the amount covered by the waiver pursuant to this section.

27 Sec. 2. (NEW) (a) On and after July 1, 2000, the Commissioner of
28 Economic and Community Development shall, within available
29 appropriations, administer a state-funded program to provide assisted
30 living services in congregate housing, as defined in section 8-119e of
31 the general statutes, for individuals who are not eligible for Medicaid,
32 and shall administer a program to provide such services to individuals
33 who qualify for Medicaid. The commissioner shall adopt regulations,
34 in accordance with chapter 54 of the general statutes, to establish a
35 sliding fee scale for required contributions to the cost of services
36 provided under the state-funded program for program participants
37 whose income is equal to or greater than one hundred fifty per cent of
38 the federal poverty level. The sliding fee scale shall be based on a
39 formula which establishes the midpoint of each twenty-five per cent
40 income increase over the poverty level and assesses a fee based on a
41 percentage of the midpoint for all eligible persons whose income is
42 within that range. The percentage of the midpoint shall start at eleven
43 per cent and shall increase by one per cent for each income range. As
44 used in this section, "assisted living services" means nursing services
45 and assistance with activities of daily living provided to clients living
46 within a managed residential community having supportive services

47 that encourage clients primarily age fifty-five or older to maintain a
48 maximum level of independence.

49 (b) In order to facilitate the development of services in state-funded
50 congregate housing facilities, the commissioner may waive any
51 provision of the regulations for assisted living services agencies, as
52 defined in section 19a-490 of the general statutes, which provide
53 services in state-funded congregate housing facilities. No waiver of
54 such regulations shall be made if the commissioner determines that the
55 waiver would: (1) Endanger the life, safety or health of any resident
56 receiving assisted living services in a state-funded congregate housing
57 facility; (2) impact the quality or provision of services provided to a
58 resident in a state-funded congregate housing facility; (3) revise or
59 eliminate the requirements for an assisted living services agency's
60 quality assurance program; (4) revise or eliminate the requirements for
61 an assisted living services agency's grievance and appeals process; or
62 (5) revise or eliminate the assisted living services agency's
63 requirements relative to a client's bill of rights and responsibilities. The
64 commissioner, upon the granting of a waiver of any provision of such
65 regulations, may impose conditions which assure the health, safety
66 and welfare of residents receiving assisted living services in a state-
67 funded congregate housing facility. The commissioner may revoke
68 such a waiver upon a finding that the health, safety or welfare of any
69 such resident is jeopardized.

70 (c) The annualized cost of services provided to an individual under
71 the programs shall not exceed fifty per cent of the weighted average
72 cost of care in nursing homes in the state, except an individual who
73 received services costing in excess of such amount in the fiscal year
74 ending June 30, 2001, may continue to receive such services, provided
75 the annualized cost of such services does not exceed eighty per cent of
76 the weighted average cost of such nursing home care. The
77 commissioner may allow the cost of services provided to an individual
78 to exceed the maximum cost established pursuant to this subsection in

79 a case of extreme hardship, as determined by the commissioner,
80 provided in no case shall the cost of services provided to an individual
81 exceed that of the weighted cost of such nursing home care.

82 (d) The commissioner shall establish a fee schedule for reimbursing
83 assisted living services agencies for such assisted living services. The
84 commissioner may annually increase any fee in the fee schedule based
85 on an increase in the cost of services. The fee schedule may be phased
86 in over a two-year period during which no agency shall be paid for a
87 service in an amount which varies by more than ten per cent from the
88 payment made for the service in the preceding fiscal year. The
89 commissioner may increase any fee payable to an assisted living
90 services agency upon the application of such an agency evidencing
91 extraordinary costs. In no case shall any rate or fee exceed the charge
92 to the general public for similar services. An assisted living services
93 agency which, due to any material change in circumstances, is
94 aggrieved by a rate determined pursuant to this section may, not later
95 than ten days after receipt of written notice of such rate from the
96 commissioner, request in writing a hearing on all items of
97 aggrievement. The commissioner shall, upon the receipt of all
98 documentation necessary to evaluate the request, determine whether
99 there has been such a change in circumstances and shall conduct a
100 hearing if appropriate. The commissioner shall adopt regulations, in
101 accordance with chapter 54 of the general statutes, to implement the
102 provisions of this subsection.

103 (e) The Commissioner of Economic and Community Development
104 may adopt regulations, in accordance with chapter 54 of the general
105 statutes, to implement the provisions of this section.

106 Sec. 3. (NEW) (a) Congregate housing, as defined in section 8-119e
107 of the general statutes, shall be deemed to meet the requirements
108 established for a managed residential community for the purpose of
109 providing assisted living services pursuant to section 2 of this act.

110 (b) The Commissioner of Public Health may waive the required
111 number of hours of on-site supervision of assisted living services as set
112 forth in subsection (j) of section 19-13-D105 of the regulations of
113 Connecticut state agencies for assisted living services provided
114 pursuant to section 2 of this act.

115 (c) The manager of a congregate housing project may contract with
116 a single assisted living services agency to provide services to residents
117 pursuant to section 2 of this act.

118 Sec. 4. The Commissioner of Economic and Community
119 Development shall, within available appropriations, study the need for
120 assisted living services in congregate housing, as defined in section 8-
121 119e of the general statutes. The study shall determine the percentage
122 of residents who would require such services and the types of services
123 which would be required. Not later than June 30, 2001, the
124 commissioner shall submit the report on the study findings to the joint
125 standing committee of the General Assembly having cognizance of
126 matters relating to human services, and the select committee of the
127 General Assembly having cognizance of matters relating to aging. The
128 commissioner may seek and obtain funds from public and private
129 sources for such study.

130 Sec. 5. This act shall take effect from its passage.

Statement of Legislative Commissioners:

In sections 1 and 2, for clarity, the incorporation by reference of the definition of "assisted living" was replaced with that definition as copied from that cited regulation. In section 2(b), "certain provisions" was replaced with "any provisions" to avoid ambiguity. Section 3(b) was reworded for clarity.

AGE Committee Vote: Yea 13 Nay 0 JF C/R HS

HS Committee Vote: Yea 12 Nay 6 JFS

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: Significant Cost, Potential Savings

Affected Agencies: Departments of Social Services, Economic and Community Development

Municipal Impact: None

Explanation**State Impact:**

This bill allows the Department of Economic and Community Development (DECD), in conjunction with the Department of Social Services (DSS), to provide assisted living services in existing elderly congregate housing facilities. These services would be available to all Medicaid and non-Medicaid eligible residents. DSS must pursue a federal waiver to allow Medicaid reimbursement for these assisted living services. The program for non-Medicaid eligible residents would be subject to available appropriations and would also require contributions on a sliding fee scale for residents with incomes in excess of 150% of the Federal poverty level.

There are currently 24 state-funded congregate housing facilities in the state, with approximately 980 total units. Based on an existing assisted living pilot program, approximately one-third of congregate housing residents will be Medicaid eligible and will require assisted living services at an additional cost of \$1,250 per month. This indicates

an annualized cost of these services of approximately \$4.9 million. Assuming that DSS obtains the waiver allowing 50% federal reimbursement, the net annual cost to the state would be \$2.45 million. The provision of assisted living services may also result in savings in the Medicaid funded long-term care program by delaying more costly nursing home placements (such care currently costs approximately \$3,750 per month). The extent of this savings cannot be quantified. Both the House and Senate versions of sHB 5217, the Appropriations Act, include \$803,000 in FY01 for this extension of assisted living services, which assumes a gradual implementation of this program beginning October 1.

The Department of Economic and Community Development would incur additional costs for the administration of the sliding fee scale for the assisted living program for non-Medicaid eligible residents of congregate housing. However, as this program is dependent upon available appropriations and neither the House nor Senate version of the Appropriations Act contains funds to establish this program, DECD is not expected to incur these additional costs.

Section 4 of the bill requires DECD to study the need for assisted living services in congregate housing and submit a report to the General Assembly. The department will incur additional administrative costs to conduct this study. However, these costs are expected to be minimal and will not require additional appropriations.

OLR Bill Analysis

sSB 2

AN ACT CONCERNING ASSISTED LIVING SERVICES IN CONGREGATE HOUSING.**SUMMARY:**

This bill makes assisted living services available to state-funded congregate housing residents who (1) qualify for Medicaid under a federal waiver or (2) participate in a state-funded program and, if their incomes are above a certain level, contribute to the cost of their care. The Department of Economic and Community Development (DECD) will administer both programs.

The bill gives the DECD commissioner authority to adopt regulations to implement the programs and lets him waive provisions of the regular assisted living services regulations under certain conditions. It requires him to set the fees he pays to assisted living services agencies (ALSAs) and to study the need for these services in congregate housing.

EFFECTIVE DATE: Upon passage

FEDERAL MEDICAID WAIVER PROGRAM

The bill requires the Department of Social Services (DSS) commissioner, by July 1, 2000, to seek a federal waiver for the Medicaid program to pay expenditures for assisted living services in state-assisted congregate housing. (Medicaid funding is 50% federal and 50% state funds.) It requires the commissioner to arrange for this Medicaid coverage as soon as the federal Health Care Financing Administration (HCFA) approves the waiver. The bill defines "assisted living services" as nursing services and assistance with activities of daily living provided to clients living in a managed residential community (MRC) that has supportive services that encourage clients primarily age 55 or older to maintain maximum

independence. The services must be provided by an ALSA.

The bill requires DSS and DECD to enter into a memorandum of understanding, effective by the waiver approval date, to provide these services in congregate housing for Medicaid-eligible individuals. (DECD supervises the 24 state-funded congregate housing complexes in Connecticut.) The bill requires DSS, starting on the waiver approval date, to transfer to DECD the amount it needs to provide the services, up to the amount covered by the waiver.

STATE PROGRAM-SLIDING FEE SCALE

For the state-funded program, which must start July 1, 2000 and be administered within available appropriations, the bill requires the DECD commissioner to adopt regulations establishing a sliding fee scale for required contributions to the cost of services for participants whose income is at least 150% of the federal poverty level (FPL). The FPL for 2000 is \$8,350 for one person; 150% of FPL is \$12,525.

The bill requires the sliding fee scale to be based on a formula that establishes the midpoint of each 25% income increase over the poverty level and assesses a fee based on a percentage of the midpoint for all eligible individuals whose income is within that range. It requires the percentage of the midpoint to start at 11% and to increase by 1% for each income range (This calculation appears to be unclear. Presumably, the 11% contribution starts at 150% of poverty level, but the calculation refers to the midpoint of each 25% increase over the poverty level itself and requires the percentage of the midpoint to start at 11%. This is the same calculation currently in statute for contributions under the state-funded portion of the Connecticut Home Care Program for Elders.)

OPTION TO WAIVE EXISTING REGULATIONS

The bill allows the DECD commissioner to waive any provision of the existing ALSA regulations for these ALSAs to facilitate services in state-funded congregate housing. But it prohibits waiving any regulation if the commissioner determines that the waiver would:

1. endanger the life, safety, or health of any residents receiving the

services;

2. affect the quality or provision of services provided to residents; or
3. revise or eliminate the requirements for an ALSA's quality assurance program, grievance and appeals process, or clients' bill of rights and responsibilities.

The bill allows the commissioner, upon waiving a provision, to impose conditions that assure the residents' health, safety, and welfare. He may also revoke the waiver if he finds that their health, safety, or welfare is jeopardized.

The bill deems congregate housing, as defined in law, as meeting the requirements established for an MRC for purposes of providing assisted living services under these programs. (By law, ALSAs must provide their services in MRCs.)

The bill permits the public health commissioner to waive the legally required number of hours of on-site supervision for assisted living services provided in congregate housing (see BACKGROUND).

The bill allows a congregate housing project manager to contract with a single ALSA to provide services.

ANNUAL SERVICE COST LIMITS

Under the bill, the annualized cost of services provided to an individual under both the Medicaid and state-funded programs cannot exceed 50% of the weighted average cost of nursing home care in the state. But the bill lets individuals who received services costing more than that in FY 2000-01 continue to receive services as long as the annual cost is not more than 80% of the weighted average cost. It also permits the commissioner to allow the cost of services to exceed these maximums in cases of extreme hardship, as the commissioner determines, but in no case can it be more than 100% of the weighted cost.

ALSA FEE SCHEDULE

The bill requires the DECD commissioner to establish a fee schedule for reimbursing ALSAs and lets him annually increase the fees based on increases in service costs. It lets him phase in the fee schedule over two years. During the phase-in, no agency can receive a fee that varies more than 10% from one year to the next.

The bill lets the commissioner increase any fee he pays to an ALSA if the agency shows it has extraordinary costs. In no case can any rate or fee exceed the charge to the general public for similar services.

If an agency, because of a material change in circumstances, is aggrieved by a fee the commissioner sets, it can, no later than 10 days after receiving notice of the rate, request a hearing. If appropriate, the commissioner must hold a hearing once he has received all documentation needed to evaluate the request. The bill requires the commissioner to adopt regulations to implement the provisions concerning the fee schedule, appeal, and hearing.

DECD ASSISTED LIVING STUDY

The bill requires the DECD commissioner, within available appropriations, to study the need for assisted living services in congregate housing. The study must determine the amount and type of services needed. It requires the commissioner, by June 30, 2001, to report the findings to the Human Services and Aging committees. The bill authorizes the commissioner to seek and obtain public and private funds for the study.

BACKGROUND

Related Bill

sHB 5251, favorably reported by the Human Services and Appropriations committees, contains similar, though not identical, provisions concerning assisted living services in state-funded congregate housing and federally assisted elderly housing. It requires participants with incomes over 200% of FPL to pay part of the cost of their care, but uses a different method to calculate their share.

Congregate Housing

“Congregate housing” is a type of state-funded elderly housing open to people age 62 and over. It consists of independent living assisted by congregate meals, housekeeping, and personal services and is intended for people who have temporary or periodic difficulties with one or more essential activities of daily living, such as eating, bathing, grooming, dressing, or transferring.

Assisted Living Services

Under current law and regulations, assisted living services can generally be offered only by “managed residential communities,” which do not themselves have to be licensed by the state, but must meet Department of Public Health regulations that specify services the communities themselves must provide in order to offer their residents assisted living services. The assisted living services are provided on-site by licensed ALSAs.

Regulations require the ALSA to have a supervisor of assisted living services and at least one registered nurse. The supervisor must be on-site as follows:

1. at least 20 hours a week for each 10 or fewer full-time licensed nurses or assisted living aides or
2. at least 40 hours a week for each 20 full-time licensed nurses or aides.

In addition, there must be licensed nurses for at least 10 hours a week for each additional 10 or fewer full-time aides.

One assisted living services pilot program is already in its second year of operation at St. Jude’s Congregate Housing in Norwich. Another 300-unit assisted living pilot program, authorized by legislation in 1998 and modified in 1999, is currently planned for five locations in the state and expected to start operating in 2001.

COMMITTEE ACTION

Select Committee on Aging

Joint Favorable Change of Reference

Yea 13 Nay 0

Human Services Committee

Joint Favorable Substitute

Yea 12 Nay 6